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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,307	03/12/2004	Vladimir Matena	04109.0003.NPUS01	1728
7590 Vladimir Matena 1322 Kentfield Ave Redwood City, CA 94061			EXAMINER WILSON, YOLANDA L	
			ART UNIT 2113	PAPER NUMBER
			MAIL DATE 05/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/800,307

Applicant(s)

MATENA ET AL.

Examiner

Yolanda L. Wilson

Art Unit

2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-34, 74, 114 and 115 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 114 and 115 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 5, 13-18, 20 and 74 is/are rejected.
- 7) ☒ Claim(s) 6-12, 19, 21-34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/06/05</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 6-12,19,21-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
2. Claims 2,5,34 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 13 recites the limitation "the creation". There is insufficient antecedent basis for this limitation in the claim. There is no previous recitation of this limitation.
5. Claim 17 recites the limitation "the execution units". There is insufficient antecedent basis for this limitation in the claim. There is no previous recitation of this limitation.
6. Claim 20 recites the limitation "the at least one application controller". There is insufficient antecedent basis for this limitation in the claim. There is no previous recitation of this limitation.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1,2,4,5,74 are rejected under 35 U.S.C. 102(e) as being anticipated by Chandra et al. (USPN 6594779B1). As per claims 1 and 74, Chandra et al. discloses at least one node, each node including node controller means for starting, stopping and detecting a failure of a process on the node in column 5, lines 36-51; a plurality of application controllers wherein: each application controller includes control means for managing at least one application according to an execution model in column 5, lines 36-51; and a first application controller including management means for managing a different type of software from a second application controller in column 5, lines 36-51; and an execution controller, the execution controller including execution control means for maintaining status information of processes started by the node controller executing on the at least one node and maintaining status and availability information of the at least one node in column 5, lines 56-63.

9. As per claim 2, Chandra et al. discloses including a plurality of nodes and wherein the execution controller means include means for maintaining status and availability information of the plurality of nodes in column 5, lines 56-63.

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10. As per claim 4, Chandra et al. discloses at least one node, each node including a node controller configured to start, stop and detect a failure of a process on the node in column 5, lines 36-51; a plurality of application controllers wherein: each application controller is configured to manage at least one application according to an execution model in column 5, lines 36-51; and a first application controller configured to manage applications according to an execution model that is different from the execution model of the applications managed by a second application controller in column 5, lines 36-51; and an execution controller, the execution controller configured to: maintain status information of processes started by the node controller executing on the at least one node; and maintain status and availability information of the at least one node in column 5, lines 56-63.

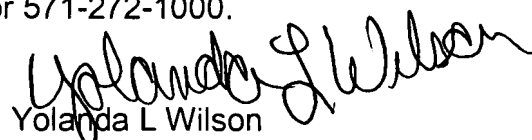
11. As per claim 5, Chandra et al. discloses including a plurality of nodes and wherein the execution controller maintains status and availability information of the plurality of nodes in column 5, lines 56-63.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yolanda L. Wilson whose telephone number is (571) 272-3653. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Yolanda L. Wilson  
Examiner  
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